ICT~Office Terms and Conditions
Module 2 Development of software

The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.

1. Applicability

1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier develops software on behalf of the Client for the Client or one or more third parties and installs the software where applicable.

1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

2. Specifications of the software

2.1 If the Supplier has not already been provided with specifications or a design by or on behalf of the Client before entering into the agreement, the parties shall draw up written specifications in consultation with regard to what software will be developed and how the development will take place. The parties both acknowledge that effective coordination and good mutual communication are essential factors in the proper specification, design and development of software. Collaboration and mutual communication will take place wherever possible subject to due observance of any project plan, arrangements and/or procedures agreed between the parties in writing.

2.2 The Client shall at all times guarantee the correctness, completeness and consistency of any information, specifications and designs submitted to the Supplier, even if such information, specifications and designs have been provided by a third party. Any errors, omissions or inconsistencies shall at all times be at the risk and expense of the Client.

2.3 The Supplier is entitled, however not obliged, to check the correctness, completeness and consistency of the information, specifications or designs submitted to it and on identifying any errors or omissions to suspend the agreed work until such time as the Client has fixed the errors or omissions in question. The Client undertakes to notify the Supplier in all cases as soon and in as much detail as possible of any errors or omissions in the specifications or the design for the software to be developed of which it becomes aware.

2.4 If the parties are using a development method that is characterised by the basic principle that the design and/or development of parts of the software shall be governed by a prioritisation in relation to the specifications that is to be determined in greater detail during the execution of the agreement, this prioritisation shall in all cases be drawn up in consultation between the parties.

3. Development of the software

3.1 The Supplier shall develop the software with due care, subject to due observance of the software specifications or design and – where appropriate – with due observance of the project plan, methods, techniques, arrangements and/or procedures agreed in writing with the Client. Before commencing the development work, the Supplier may require the Client to issue a written declaration of its full and unconditional agreement to the specifications or design. The Supplier shall be entitled to suspend its activities until such time as the Client has issued a written declaration of its full and conditional approval to the specifications or design.

3.2 The Supplier shall in all cases carry out the development work on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.

3.3 If it has been agreed that the development of the software will take place in stages or if the Supplier is using a development method that is based on phased implementation, the Supplier shall be entitled to delay the start of the services associated with a stage until such time as the Client has approved the results of the previous stage in writing.

3.4 Except where otherwise agreed in writing, the Supplier shall not be obliged to follow timely and well-founded instructions issued by the Client during the realisation of the development work. The Supplier shall not be obliged to follow instructions that change or extend the content or scope of the Supplier's performance obligations. If such instructions are followed, however, compensation shall be provided for

the work in question in accordance with the Supplier's standard rates.

3.5 If the agreement regarding the development of software has been entered into with a view to execution by one or more specific individuals, the Supplier shall at all times be entitled to replace these individuals, following consultation with the Client, at a time to be determined by the Supplier with one or more other individuals with the same qualifications.

3.6 On request, the Client shall provide the Supplier with the opportunity to carry out the work outside of normal working days and working hours at the Client's offices or site.

4. Delivery and installation

4.1 The Supplier shall deliver the software to the Client on data media of the agreed type and format, or using telecommunication facilities (online). The Supplier shall determine the delivery method.

4.2 The Supplier will only install the software on the Client's premises if this has been agreed between the parties in writing. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the software, and adapt the hardware used and operating environment where necessary. Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.

4.3 The user documentation shall be provided in paper or digital format. The Supplier shall decide on the format and language in which the user documentation is provided.

5. Acceptance test and acceptance

5.1 If the parties have not agreed that an acceptance test will be carried out, the Client shall accept the software in the condition that it is in at the time of delivery ('as is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's obligations pursuant to the guarantee in Article 11 of this module.

5.2 If the parties have agreed to an acceptance test in writing, the provisions of Article 5.3 to 5.10 inclusive of this module shall apply.

5.3 Where this module refers to 'errors', this shall be understood to mean the substantial failure to meet the functional or technical specifications explicitly agreed in writing between the parties. An error shall only be deemed to exist if the Client is able to demonstrate the error and if it can be reproduced. The Client is obliged to notify the Supplier immediately of any errors.

5.4 If an acceptance test has been agreed to, the test period shall be fourteen days following delivery or, if it has been agreed in writing that the Supplier will carry out the installation, following completion of the installation. The Client is not entitled to use the software for productive or operational purposes during the test period. The Client shall carry out the agreed acceptance test on the (interim) results of the development work using appropriately qualified personnel, with an adequate scope and in sufficient depth, and will provide the Supplier with a written, clear and understandable report on the test results.

5.5 If an acceptance test has been agreed to, the Client shall be obliged to assess under its full and exclusive responsibility whether the software delivered conforms to the functional or technical specifications made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications explicitly agreed between the parties in writing. Except where agreed otherwise in writing, any assistance provided by or on behalf of the Supplier during the performance of an acceptance test shall be entirely at the risk and expense of the Client.

5.6 The software shall be deemed to have been accepted between the parties:
a. if the parties have not agreed to an acceptance test: on delivery or, if it has been agreed in writing that the Supplier will carry out the installation, on completion of the installation, or
b. if the parties have agreed to an acceptance test: on the first day following the test period, or
c. if the Supplier receives a test report as referred to in Article 5.7 before the end of the test period: at such time as the errors described in the test report have been fixed, notwithstanding the presence of defects that do not preclude acceptance according to Article 5.8. Contrary to the above, if the Client uses the software for productive or operational purposes before the time of explicit acceptance, the software shall be deemed to have been accepted in full from the time at which such use commenced.

5.7 If on carrying out the agreed acceptance test it emerges that the software contains errors, the Client shall notify the Supplier of the errors no later than on the last day of the test period by means of a written and detailed test report. The Supplier shall make every effort to fix the errors identified within a reasonable period of time, whereby the Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.

5.8 Acceptance of the software may not be withheld on grounds that do not relate to the specifications explicitly agreed between the parties, nor due to the existence of minor errors, these being errors that cannot reasonably be deemed to prevent the operational or productive use of the software, without prejudice to the Supplier's obligation to

fix these minor errors within the context of the guarantee scheme in Article 11, if and in so far as applicable. Acceptance may also not be withheld on the basis of aspects of the software that can only be assessed subjectively, such as aesthetic aspects and aspects relating to the design of user interfaces.

5.9 If the software is delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or other part, where appropriate.

5.10 Acceptance of the software by one of the methods referred to in this Article shall mean that the Supplier is discharged in respect of compliance with its obligations in relation to the development of the software and, if it has been agreed that the Supplier will carry out the installation, with its obligations in relation to the installation of the software. Acceptance of the software shall not affect the Client's rights pursuant to Article 5.8 in relation to minor errors and Article 11 in relation to the guarantee scheme.

6. Right of use

6.1 The Supplier shall make the software developed on behalf of the Client and the corresponding user documentation available to the Client for use.

6.2 The software source code and the technical documentation produced during the development of the software shall only be made available to the Client if and in so far as this has been agreed in writing. If this is the case, the Client shall be entitled to make changes to this software. If the Supplier is ordered in court to provide the Client with the source code and/or technical documentation, the Supplier may impose a reasonable fee.

6.3 Except where agreed otherwise in writing, the Supplier shall not be obliged to provide the auxiliary software and program or data libraries required for the use and/or maintenance of the software. If, contrary to the foregoing, the Supplier is also required to provide auxiliary software and/or program or data libraries, the Supplier may require the Client to enter into a separate written agreement for this purpose. The provision of such auxiliary software and/or program or data libraries shall be invoiced separately at the Supplier's standard rates as appropriate.

6.4 Except where otherwise agreed in writing, the Supplier's performance obligations shall not include the maintenance of the software and/or the provision of support to the users of the software. If, contrary to the foregoing, the Supplier is also required to provide maintenance and/or support, the Supplier may require the Client to enter into a separate written agreement for this purpose. Such work

and services shall be invoiced separately at the Supplier's standard rates as appropriate.

6.5 Without prejudice to the provisions of the General module, the right of use of the software shall in all cases be non-exclusive, non-transferable and non-sublicensable.

7. Restrictions on use

7.1 If the written agreement explicitly stipulates that all design and development costs shall be borne exclusively and in full by the Client, the right of use of the software developed on behalf of the Client shall not be subject to any restrictions, without prejudice to the remaining provisions of the general terms and conditions, including the provisions of Article 7.6 of this module.

7.2 If the parties have agreed to restrictions on use, the Client shall strictly comply with the agreed restrictions on the right of use of the software in all cases. The Client is aware that the violation of an agreed restriction on use shall constitute both breach of the contract with the Supplier and an infringement of the intellectual property rights in respect of the software. The agreed restrictions on use may relate to such aspects as:
- the kind or type of hardware that the software is intended for, and/or
- the maximum number of processing units that the software is intended for, and/or
- specific – referred to by name or job title or otherwise – individuals who are permitted to use the software within the Client's organisation, and/or
- the maximum number of users who are permitted to use the software – simultaneously or otherwise – within the Client's organisation, and/or
- the location at which the software may be used, and/or
- specific forms and purposes of use (e.g. commercial use or use for private purposes), and/or
- any other quantitative or qualitative restriction.

7.3 If the parties have agreed that the software may only be used in combination with specific hardware or a specific kind or type of hardware, the Client shall be entitled in the event of malfunction of the relevant hardware to use the software on other hardware of the same kind or type for the duration of the malfunction.

7.4 The Supplier may require the Client to refrain from using the software until such time as the Client has requested and obtained one or more codes (passwords, identity codes etc.), required for use, from the Supplier, its own supplier, or the software manufacturer.

7.5 Under no circumstances shall the Client circumvent technical provisions intended to protect the software against unlawful or

unauthorised use, or arrange for this to be carried out.

7.6 Except where agreed otherwise in writing, the Client shall only be permitted to use the software within and on behalf of its own company or organisation. Except where agreed otherwise in writing, the Client shall not use the software to process data on behalf of third parties, e.g. for services such as 'time-sharing', 'application service provision', 'software as a service' and 'outsourcing'.

7.7 The Client shall not be permitted to sell, rent out, transfer or grant restrictive rights to the software and the media on which the software is stored, or to make these available to third parties in any way or for any purpose. The Client shall also refrain from granting third parties access – remote or otherwise – to the software or providing the software to a third party for the purpose of hosting, even if the third party in question only uses the software on behalf of the Client.

7.8 Upon request, the Client shall immediately lend its full cooperation to any investigations to be conducted by or on behalf of the Supplier in relation to the Client's compliance with the agreed restrictions on use. At the first request of the Supplier, the Client shall grant the Supplier access to its buildings and systems. The Supplier shall maintain the confidentiality of all company information to be regarded as confidential that the Supplier obtains from or on the premises of the Client within the context of this type of investigation, in so far as this information does not relate to the use of the software itself.

8. Term of the agreement

8.1 The software developed on behalf of the Client shall be made available to the Client for the term agreed between the parties. If no term has been agreed between the parties, the term of the right of use shall not be subject to a time limit and the Supplier shall not be entitled to terminate the agreement by giving notice, provided that the Client strictly complies with all of its obligations vis-à-vis the Supplier arising from the agreement.

8.2 Where appropriate, the Client shall return all copies of the software that it has in its possession to the Supplier immediately following expiry of the right of use of the software. If the parties have agreed that the Client will destroy the relevant copies at the end of the agreement, the Client shall notify the Supplier immediately in writing that this has been carried out. The Supplier shall not be obliged to provide the Client with assistance on or after expiry of the right of use with a view to data conversion required by the Client.

9. Remuneration for development work

9.1 If an invoicing schedule has not been agreed, all amounts relating to the development of software shall in each case be payable in arrears each calendar month.

9.2 Except where agreed otherwise in writing, the price for the development work shall also include the fee in respect of the right of use of the software.

9.3 Except where agreed otherwise in writing, the software development fee shall not include a fee for the auxiliary software and program and data libraries required by the Client, any installation services and any adjustments to and/or maintenance of the software. The right of use fee also does not include the provision of support to users of the software. Such work and services shall be invoiced separately at the Supplier's standard rates as appropriate.

10. Modification of the software

10.1 Except where agreed otherwise in writing and notwithstanding exceptions set out in law, the Client shall not be permitted to modify the software in part or in full without the prior written consent of the Supplier. The Supplier shall at all times be entitled to refuse its consent or to attach conditions to its consent, including conditions in relation to the method and quality of implementation of the modifications required by the Client.

10.2 The Client shall bear all risks associated with modifications carried out by or on behalf of the Client by third parties with the consent of the Supplier or otherwise.

11. Guarantee

11.1 The Supplier shall not guarantee that the software developed on behalf of the Client will be suitable for the actual and/or envisaged use by the Client. The Supplier shall also not guarantee that the software will operate with no interruptions, errors or other defects or that all errors and defects will always be fixed.

11.2 The Supplier shall make every effort to fix errors in the software within the meaning of Article 5.3 of this module within a reasonable period of time if the Supplier receives detailed, written notification of these errors within a period of three months following delivery or, if the parties have agreed to an acceptance test, within three months of acceptance. Errors shall be fixed free of charge, unless the software was developed on behalf of the Client other than at a fixed price, in which case the Supplier shall invoice the costs associated with fixing the errors at its standard rates. The Supplier shall be entitled to invoice the costs of fixing errors at its standard rates in the event of operational errors or improper use by the Client, or other causes that are not attributable to the Supplier,

or if the errors could have been discovered during the execution of the agreed acceptance test. The Supplier shall not be obliged to fix errors if the Client has made changes to the software, or has arranged for this to be carried out, without the written consent of the Supplier. Such consent shall not be withheld on unreasonable grounds.

11.3 The fixing of errors shall take place at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software at any time.

11.4 Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.

11.5 The Supplier shall not be obliged to fix errors that are reported following expiry of the guarantee period referred to in Article 11.2 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.

12. Confidentiality

12.1 The Client acknowledges that the software is of a confidential nature and contains trade secrets of the Supplier, its own suppliers and/or the software manufacturer.